



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0370]

Hours of Service of Drivers: U.S. Department of Energy (DOE); FAST Act Extension of Expiration Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of exemption.

SUMMARY: FMCSA announces the extension of the hours-of-service (HOS) exemption granted to the U.S. Department of Energy (DOE) on June 30, 2015, for certain commercial motor vehicle (CMV) drivers. The Agency extends the expiration date of the exemption to June 29, 2020 in response to section 5206(b)(2)(A) of the “Fixing America’s Surface Transportation Act” (FAST Act). That section extends the expiration date of all HOS exemptions in effect on the date of enactment to 5 years from the date of issuance of the exemptions. The DOE exemption from the Agency’s 30-minute rest break requirement is limited to DOE’s contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials. The Agency previously determined that CMV operations under this exemption would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This limited exemption is effective from June 30, 2015, through June 29, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: MCPSPD@dot.gov.

SUPPLEMENTARY INFORMATION:

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)].

Section 5206(b)(2)(A) of the FAST Act requires FMCSA to extend all exemptions from the HOS regulations (49 CFR part 395) that were in effect on the date of enactment of the Act to a period of 5 years from the date the exemption was granted. The exemption may be renewed. Because this action merely implements a statutory mandate that took effect on the date of enactment of the FAST Act, notice and comment are not required.

DOE Exemption

From 2013 to 2015, DOE held a limited exemption from the mandatory 30-minute rest break requirement of 49 CFR 395.3(a)(3)(ii) that allowed DOE contract carriers and their drivers transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives pursuant to § 395.1(q). As that exemption neared expiration, DOE applied for its renewal.

FMCSA reviewed DOE's request and the public comments and reaffirmed its previous conclusion that allowing these drivers to count on-duty time "attending" their CMVs toward the required 30-minute break, would promote safety at least as effectively as the break itself. The notice renewing the DOE exemption was published on the June 22, 2015 [80 FR 35703].

The substance of the 2015 exemption is not affected by this extension. The DOE exemption covers only the 30-minute break requirement [49 CFR 395.3(a)(3)(ii)] and is restricted to contract motor carriers and their drivers employed by DOE transporting security-sensitive radioactive materials. On each trip, the drivers are allowed to use 30 minutes or more of “attendance time” to meet the requirements for a rest break in the manner provide in 49 CFR 395.1(q), provided they perform no other on-duty activities during the rest break.

The FMCSA does not believe the safety record of any driver operating under this exemption will deteriorate. However, should deterioration in safety occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA has the authority to terminate the exemption at any time the Agency has the data/information to conclude that safety is being compromised.

Issued on: July 14, 2016

T.F. Scott Darling, III
Acting Administrator

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